

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3866 of 1985

with

SPECIAL CIVIL APPLICATION No 6782 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT

Versus

JAYDEV M PANDYA

Appearance:

1. Special Civil Application No. 3866 of 1985
MR MUKUND NAGARKAR for Petitioner
None present for Respondent
 2. Special Civil Application No 6782 of 1985
None present for Petitioner
MR MUKUND NAGARKAR for Respondent No. 1
None present for other Respondents
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/97

ORAL JUDGMENT

#. Both these Specail Civil Applications have arisen from one and same Award and as such are being taken up for hearing together and are being decided by this common order.

#. The respondent in the first petition and petitioner in the second petition, hereinafter referred to as 'workman', is a conductor working in Gujarat State Road Transport Corporation (hereinafter referred to as 'Corporation'). In connection with the misconduct, i.e. charging of fare from the passengers and not issuing tickets, after holding full fledged departmental inquiry, the workman was ordered to be dismissed from services of the Corporation. The workman raised industrial dispute and the State Government has referred the same for adjudication to the Labour Court, Rajkot, which was numbered Ref. (LCR) No.1041 of 1983. Under the Award dated 10.1.85, the Labour Court, Rajkot, has ordered for reinstatement of the workman to his original post with continuity of services, but without backwages. So the Corporation, being aggrieved of the part of the Award granting reinstatement to the workman, filed the Special Civil Application No.3866 of 1985, and the workman, being aggrieved of the part of the said Award, denying him backwages, has filed Special Civil Application No.6782 of 1985 before this Court.

#. The learned counsel for the Corporation contended that it is a case where the workman has not issued tickets to passengers and has collected amount for tickets. So it is a case of serious misconduct and as such penalty of dismissal which has been given by the Corporation should not have been interfered with by the Labour Court. It is further contended that the Corporation produced before the Labour Court, the default card, annexure 'B' herein, of the workman regarding defaults previously committed by him. As per the said default card about 13 misconducts were committed by workman earlier but every time light punishment has been given to the workman. So looking to the past conduct also interference in the order of Corporation dismissing him from services, could not have been made by Labour Court.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the Corporation.

#. The Labour Court has found fault in the inquiry as the workman has not been afforded full opportunity of

defence as he has been denied an opportunity to cross-examine passengers in his defence. The Labour Court has found that the request of the workman to examine the passengers has illegally been turned down by the inquiry officer as the ground given for declining the said request is wholly arbitrary and unjustified. The request has been turned on the ground that the workman has admitted that the passengers had no tickets. That was the defence of the workman and to prove that defence he wanted to examine passengers which cannot be said to be immaterial defence of delinquent employee in defence. Further finding has been given by the Labour Court that defence of the workman that those passengers had taken their seats without his knowledge and therefore he had not collected fare from these persons. I find sufficient justification in the finding of the Labour Court that the passengers could have thrown light on the question whether they had paid fare to the workman or not. The Labour Court has committed no error in holding that the action of the inquiry officer in turning down the request of workman to examine passengers is not proper. The Labour Court has accepted finding of the inquiry officer that the workman had not issued tickets to four passengers, but the other part of the finding of inquiry officer that the workman had collected fare from those passengers was held to be baseless and perverse. So, after recording this finding, the Labour Court has considered it to be a case of excessive punishment to the delinquent employee and it has interfered with the quantum of punishment. It cannot be said that the approach of the Labour Court is wholly perverse or arbitrary. The Labour Court has interfered with the quantum of punishment and in the facts of the case where it has set aside the punishment of dismissal of the workman from services, it cannot be said that it has acted beyond its jurisdiction. The Special Civil Application No.3866 of 1985 is without any merits and the same is dismissed.

#. The challenge made by the workman to the part of the Award under which backwages are denied is also without any substance. It is not a case where the petitioner has been exonerated. The Labour Court has found as a fact that four passengers in the bus were travelling without tickets. Whether the workman has taken money or not may not be a question here, but it is also not the end of the matter. The petitioner's duty as a conductor was to see that all passengers seated therein have taken tickets. He should not have permitted any of the passengers to enter in the bus without first taking ticket or for any reason if the passengers entered in the bus, it was his

duty to see that he collects money from them and issues tickets. It was a case where the Labour Court has found as a fact that it is a case of misconduct committed by workman but the punishment of dismissal was considered to be excessive. So instead of substituting any other punishment for dismissal the Labour Court has considered that if the backwages of the workman are withheld, it will be sufficient punishment. So the backwages of the workman were ordered to be withheld by substituting it to be penalty for the penalty of dismissal and as such it cannot be said that the backwages have been denied to the petitioner without any ground or reason. The Special Civil Application No.6782 of 1985 is also devoid of any substance and the same is dismissed.

#. In the result, both these Special Civil Applications fail and the same are dismissed. Rule discharged in both Special Civil Applications. No order as to costs.

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